



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

RENAISSANCE HOSPITAL
C/O BURTON & HYDE PLLC
PO BOX 684749
AUSTIN TX 78768-4749

Respondent Name

EMPLOYERS INSURANCE COMPANY OF WAUSAU

Carrier's Austin Representative Box

Box Number 1

MFDR Tracking Number

M4-08-2471-01

MFDR Date Received

December 18, 2007

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "the fair and reasonable reimbursement amount for this hospital outpatient admission should be commensurate with the average amount paid by all insurance carriers in the Texas workers' compensation system in the same year as this admission for those admissions involving the same Principal Diagnosis Code and Principal Procedure Code."

Amount in Dispute: \$22,417.80

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Renaissance Hospital has a contractual agreement with First Health . . . The bill has been adjusted and priced . . . per the correct PPO rate of Renaissance Hospital's contractual agreement with First Health."

Response Submitted by: Liberty Mutual, 2875 Browns Bridge Road, Gainesville, Georgia 30504

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
August 20, 2007 to August 21, 2007	Outpatient Surgery	\$22,417.80	\$3,832.27

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.1 sets forth general provisions related to medical reimbursement.
3. Texas Labor Code §413.011 sets forth general provisions related to reimbursement policies and guidelines.
4. U.S. Bankruptcy Judge Michael Lynn issued a "STIPULATION AND ORDER GRANTING RELIEF FROM AUTOMATIC STAY TO PERMIT CONTINUANCE AND ADJUDICATION OF DISPUTED WORKERS COMPENSATION CLAIMS BEFORE THE TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS," dated August 27, 2010, in the case of *In re: Renaissance Hospital – Grand Prairie, Inc. d/b/a/ Renaissance Hospital – Grand Prairie, et al.*,

in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division in Case No. 08-43775-7. The order lifted the automatic stay to allow continuance of the claim adjudication process as to the workers' compensation receivables before SOAH, effective October 1, 2010. The order specified John Dee Spicer as the Chapter 7 trustee of the debtor's estate. By letter dated October 5, 2010, Mr. Spicer provided express written authorization for Cass Burton of the law office of Burton & Hyde, PLLC, PO Box 684749, Austin, Texas 78768-4749, to be the point of contact on Mr. Spicer's behalf relating to matters between and among the debtors and the Division concerning medical fee disputes. The Division will utilize this address in all communications with the requestor regarding this medical fee dispute.

5. By letter dated August 2, 2011, the attorney for the requestor provided *REQUESTOR'S AMENDED POSITION STATEMENT (RENAISSANCE HOSPITAL – DALLAS)* that specified, in pertinent parts, an "Additional Reimbursement Amount Owed" of \$3,832.27 and an "alternative" "Additional Reimbursement Amount Owed" of \$4,495.10. The Division notes that the amount in dispute of \$22,417.80 specified above is the original amount in dispute as indicated in the requestor's *TABLE OF DISPUTED SERVICES* submitted prior to the *REQUESTOR'S AMENDED POSITION STATEMENT*.
6. The services in dispute were reduced/denied by the respondent with the following reason codes:
 - X094 – CHARGES INCLUDED IN THE FACILITY FEE. (X094)
 - P303 – THIS SERVICE WAS REVIEWED IN ACCORDANCE WITH YOUR CONTRACT. (P303)
 - Z652 – RECOMMENDATION OF PAYMENT HAS BEEN BASED ON A PROCEDURE CODE WHICH BEST DESCRIBES SERVICES RENDERED. (Z652)
 - Z711 – THE CHARGE FOR THIS PROCEDURE EXCEEDS THE CUSTOMARY CHARGES BY OTHER PROVIDERS FOR THIS SERVICE. (Z711)
 - Z346 – RIGHT SIDE. (Z346)
 - PA – FIRST HEALTH
 - Z710 – THE CHARGE FOR THIS PROCEDURE EXCEEDS THE FEE SCHEDULE ALLOWANCE. (Z710)

Findings

1. The insurance carrier reduced payment for the disputed service with reason codes P303 – "THIS SERVICE WAS REVIEWED IN ACCORDANCE WITH YOUR CONTRACT. (P303)" and PA – "FIRST HEALTH." Review of the submitted information found insufficient documentation to support that the disputed services are subject to a contractual fee arrangement between the parties to this dispute. Nevertheless, on June 29, 2011, the Division requested the respondent to provide a copy of the referenced contract(s) between the network and the requestor, as well as documentation to support notice to the hospital, pursuant to former 28 Texas Administrative Code §133.307(e)(1), effective December 31, 2006, 31 Texas Register 10314, which states that "The Division may request additional information from either party to review the medical fee issues in dispute. The additional information must be received by the Division no later than 14 days after receipt of this request. If the Division does not receive the requested additional information within 14 days after receipt of the request, then the Division may base its decision on the information available." Review of the subsequent information submitted by the insurance carrier and the alleged network finds insufficient documentation to support that the services in dispute are subject to a contractual fee arrangement between the parties to this dispute. No documentation was found to support that Employers Insurance Company of Wausau had been granted access to the health care provider's fee agreement with the alleged network in accordance with the terms of the contract. The alleged network submitted an incomplete copy of the alleged contract. No documentation was found to support that the contract had been signed. No documentation was found to support that the contract was in effect on the dates the disputed services were provided. No documentation was found to support that Renaissance Hospital – Dallas was contracted, or was included as a service location in the terms of the alleged contract. No documentation was found to support that Employers Insurance Company of Wausau had been granted access to the health care provider's alleged contractual fee arrangement on the dates the disputed services were provided. No documentation was found to support notice to the health care provider in accordance with the terms of the network contract that Employers Insurance Company of Wausau was an authorized participant in the alleged network on the dates that the disputed services were rendered. The respondent has failed to support the above denial/reduction reasons. The disputed services will therefore be reviewed for payment in accordance with applicable Division rules and fee guidelines.
2. This dispute relates to outpatient hospital services with reimbursement subject to the provisions of former 28 Texas Administrative Code §134.1, effective May 2, 2006, 31 Texas Register 3561, which requires that, in the absence of an applicable fee guideline, reimbursement for health care not provided through a workers' compensation health care network shall be made in accordance with subsection §134.1(d) which states that "Fair and reasonable reimbursement: (1) is consistent with the criteria of Labor Code §413.011; (2) ensures that similar procedures provided in similar circumstances receive similar reimbursement; and (3) is based on nationally recognized published studies, published Division medical dispute decisions, and values assigned for services involving similar work and resource commitments, if available."

3. Texas Labor Code §413.011(d) requires that fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. It further requires that the Division consider the increased security of payment afforded by the Act in establishing the fee guidelines.
4. 28 Texas Administrative Code §133.307(c)(2)(G), effective December 31, 2006, 31 *Texas Register* 10314, applicable to disputes filed on or after January 15, 2007, requires the requestor to provide "documentation that discusses, demonstrates, and justifies that the amount being sought is a fair and reasonable rate of reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement) when the dispute involves health care for which the Division has not established a maximum allowable reimbursement (MAR), as applicable." Review of the submitted documentation finds that:
- The requestor's amended position statement asserts that "the fair and reasonable reimbursement amount for this hospital outpatient admission should at least be commensurate with the average amount paid by all insurance carriers in the Texas workers' compensation system in the same year as this admission for those admissions involving the same Principal Diagnosis Code and Principal Procedure Code."
 - In support of the requested reimbursement methodology the requestor states that "Ordering additional reimbursement based on the average amount paid system-wide in Texas achieves effective medical cost control because it prevents overpayment . . . creates an expectation of fair reimbursement; and . . . encourages health care providers to continue to offer quality medical care to injured employees . . . ensures that similar procedures provided in similar circumstances receive similar reimbursement. . . . The average amount paid for similar admissions as put forward by the Requestor is based on a study of data maintained by the Division."
 - The Division notes that it has utilized similar data to determine "fair and reasonable" fee guidelines. See, for example, the adoption preamble to the *Hospital Facility Fee Guideline—Outpatient* at 28 Texas Administrative Code §134.403, 33 *Texas Register* 400-407, which specified, in pertinent parts, that "In maintaining a medical billing database, the Division requires carriers to submit billing and reimbursement information to the Division on a regular basis . . . The Division provided Milliman with the 837 data set for CY 2005, which included information on approximately 12,000 inpatient billing lines and 166,000 hospital outpatient billing lines . . . Milliman estimated that CY 2005 Texas workers' compensation outpatient facility reimbursement represented approximately 186 percent of Medicare allowable levels for outpatient services . . . The Division considered the issues of medical cost containment as prescribed by Labor Code §413.011 . . . Research conducted by the Workers' Compensation Research Institute concludes that . . . hospital outpatient payments per claim in Texas were lower than the 13-state median studied . . . Based on all of these factors . . . The Division adopts PAFs of 200 percent and 130 percent of Medicare reimbursement for use in determining Texas workers' compensation outpatient facility service reimbursement."
 - The requestor submitted documentation to support the state-wide, annual, average reimbursement in Texas for the principal diagnosis code and principal procedure code of the disputed services during the year that the services were rendered.
 - The requestor has explained and supported that the requested reimbursement methodology would satisfy the requirements of 28 Texas Administrative Code §134.1.

The request for additional reimbursement is supported. Thorough review of the submitted documentation finds that the requestor has discussed, demonstrated, and justified that the average amount paid by all insurance carriers in the Texas workers' compensation system in the same year as the disputed admission for those admissions involving the same principal diagnosis code and principal procedure code is a fair and reasonable rate of reimbursement for the services in dispute.

5. In the alternative, the requestor proposes that "the Hospital Facility Fee Guideline – Outpatient reimbursement formulas offer an objective calculation methodology to determine the fair and reasonable reimbursement amount for this admission." Review of the submitted documentation finds that:
- In support of the alternative requested reimbursement methodology the requestor states that "The data necessary to calculate the Maximum Allowable Reimbursement for this year of services is readily available from the Medicare Outpatient Prospective Payment System. Therefore, the new fee guidelines as adopted in 28 Tex. Admin. Code § 134.403 provide a presumptive measure of the fair and reasonable reimbursement amount."
 - The requestor did not submit documentation to support the Medicare payment calculation for the services in dispute.
 - The fee guidelines as adopted in 28 Texas Administrative Code §134.403 were not in effect during the time period when the disputed services were rendered.
 - The Division disagrees that the Hospital Facility Fee Guideline – Outpatient, as set forth in §134.403, provides a presumptive measure of the fair and reasonable reimbursement amount for dates of service prior

to the date the rule became effective. No documentation was found to support such a presumption.

- While the Division has previously found that Medicare patients are of an equivalent standard of living to workers' compensation patients (22 *Texas Register* 6284), Texas Labor Code §413.011(b) requires that "In determining the appropriate fees, the commissioner shall also develop one or more conversion factors or other payment adjustment factors taking into account economic indicators in health care and the requirements of Subsection (d) . . . This section does not adopt the Medicare fee schedule, and the commissioner may not adopt conversion factors or other payment adjustment factors based solely on those factors as developed by the federal Centers for Medicare and Medicaid Services."
- The requestor did not discuss or present documentation to support how applying the proposed payment adjustment factors as adopted in 28 Texas Administrative Code §134.403, effective for dates of service on or after March 1st, 2008, would provide for fair and reasonable reimbursement of the disputed services during the time period that treatment was rendered to the injured worker.
- The requestor did not submit nationally recognized published studies, published Division medical dispute decisions, or documentation of values assigned for services involving similar work and resource commitments to support the alternative requested reimbursement.
- The requestor did not support that the requested alternative reimbursement methodology would satisfy the requirements of 28 Texas Administrative Code §134.1.

The request for an alternative reimbursement amount calculated based on the formulas in the Hospital Facility Fee Guideline – Outpatient, as set forth in §134.403, is not supported. The requestor has not demonstrated or presented sufficient documentation to support that the alternative additional amount requested would provide a fair and reasonable rate of reimbursement for the services in dispute.

6. 28 Texas Administrative Code §133.307(d)(2)(A)(iv)(III), effective December 31, 2006, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, requires the respondent to provide a statement of the disputed fee issue(s), which includes: "a discussion of how the Labor Code and Division rules, including fee guidelines, impact the disputed fee issues." Review of the submitted documentation finds that the respondent has not discussed how the Labor Code and Division rules, including fee guidelines, impact the disputed fee issues. The Division concludes that the respondent has not met the requirements of §133.307(d)(2)(A)(iv)(III).
7. 28 Texas Administrative Code §133.307(d)(2)(A)(iv)(IV), effective December 31, 2006, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, requires the respondent to provide a statement of the disputed fee issue(s), which includes: "a discussion regarding how the submitted documentation supports the respondent's position for each disputed fee issue." Review of the documentation submitted by the respondent finds that the respondent has not discussed how the submitted documentation supports the respondent's position for each disputed fee issue. The Division concludes that the respondent has not met the requirements of §133.307(d)(2)(A)(iv)(IV).
8. 28 Texas Administrative Code §133.307(d)(2)(A)(iv)(V), effective December 31, 2006, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, requires the respondent to provide "documentation that discusses, demonstrates, and justifies that the amount the respondent paid is a fair and reasonable reimbursement in accordance with Labor Code §413.011 and §134.1 of this title if the dispute involves health care for which the Division has not established a MAR, as applicable." Review of the submitted documentation finds that:
 - The respondent's position statement asserts that "The bill has been adjusted and priced . . . per the correct PPO rate of Renaissance Hospital's contractual agreement with First Health."
 - As stated above, the respondent failed to support that the disputed services are subject to a contractual fee arrangement between the parties to this dispute. Accordingly, the applicable rule for determining reimbursement of the disputed services is 28 Texas Administrative Code §134.1(d) regarding fair and reasonable reimbursement.
 - The respondent did not discuss or explain how the amount paid represents a fair and reasonable reimbursement for the services in dispute.
 - The respondent did not submit documentation to support that the amount paid is a fair and reasonable rate of reimbursement for the disputed services.
 - The respondent did not explain how the amount paid satisfies the requirements of 28 Texas Administrative Code §134.1.

The respondent's position is not supported. Thorough review of the submitted documentation finds that the respondent has not demonstrated or justified that the amount paid is a fair and reasonable rate of reimbursement for the services in dispute. The Division concludes that the respondent has not met the requirements of 28 Texas Administrative Code §133.307(d)(2)(A)(iv)(V).

9. The Division finds that the documentation submitted in support of the fair and reasonable methodology proposed by the requestor based on the average amount paid by all insurance carriers in the same year for admissions involving the same principal diagnosis code and principal procedure code as the services in dispute is the best evidence in this dispute of an amount that will achieve a fair and reasonable reimbursement for the services in this dispute. Reimbursement will therefore be calculated as follows. Review of the medical bill finds that the principal diagnosis code for the disputed services is 717.83. The principal procedure code is 81.45. The requestor submitted documentation to support that the average, state-wide reimbursement for this diagnosis code and procedure code performed in 2007 was \$6,839.43. This amount less the amount previously paid by the respondent of \$3,007.16 leaves an amount due to the requestor of \$3,832.27. This amount is recommended.

Conclusion

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the requestor has established that additional reimbursement is due. The Division concludes that the carrier's response was not submitted in the form and manner prescribed under Division rules at 28 Texas Administrative Code §133.307. The Division further concludes that the respondent failed to support that the amount paid by the insurance carrier is a fair and reasonable reimbursement in accordance with Division rule at 28 Texas Administrative Code §134.1. As a result, the amount ordered is \$3,832.27.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby **ORDERS** the respondent to remit to the requestor the amount of \$3,832.27 plus applicable accrued interest per 28 Texas Administrative Code §134.130 due within 30 days of receipt of this Order.

Authorized Signature

_____	Grayson Richardson	October 9, 2013
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.